

DOCKETED	
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June 30, 2023

Via Email

Tracey Norberg
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**Application for Confidential Designation
Replacement Tire Efficiency Proceeding
Docket No. 20-TIRE-01**

Dear Tracey Norberg:

The California Energy Commission (CEC) has received the U.S. Tire Manufacturers Association's (applicant) application for confidentiality, filed June 1, 2023 (TN 250430) covering the following information:

- An Excel file containing 7,579 rows of the following 16 columns of tire data: OE/Replacement; Prefix; Section Width; Aspect Ratio; Construction; Rim Diameter; Suffix; Load Category (LL, SL, etc.); Load Index; Load Range; Speed Symbol; Tire_Group (passenger, CUV/SUV, light truck, etc.); Tread_Type (summer, all-season); Segment_Type (touring, performance, etc.); Speed_Group (T&below, H&V, WYZ); and European Network Aligned Value Rolling Resistance Coefficient (RRC) (kg/T). The data is 127 pages when printed with all columns on a page and the first row repeated on each page as a header.

The applicant states that the Excel file comprises proprietary business trade secrets that are exempt from disclosure under Government Code section 7927.705, Civil Code section 3426 et seq., Evidence Code 1040, and United States Code, title 18, section 1836. The applicant requests that the Excel file in its entirety be kept confidential indefinitely.

An application for confidential designation shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), "if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [California Energy] Commission to keep the record confidential." The executive director's determination made in response to an application for confidential designation is subject to a reasonableness standard. The applicant must make a reasonable claim for confidentiality based on the California Public Records Act and other applicable laws.

The California Public Records Act allows for the non-disclosure of trade secrets including, among others, those records exempt from disclosure under the Uniform Trade Secrets Act. (Gov. Code, §§ 7927.705(k), 7930.005, 7930.205; Civ. Code, § 3426.1; Evid. Code, § 1060.)

Civil Code section 3426.1(d) defines "trade secret" as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process, that: (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(Civ. Code, § 3426.1(d); See also Gov. Code, §§ 7927.705, 7930.005, 7930.205; Evid. Code, § 1061(a); *Uribe v. Howie* (1971) 19 Cal.App.3d 194, 207.)

California Code of Regulations, title 20, section 2505(a)(1)(D), states that if an applicant for confidential designation believes that the record should not be disclosed because it contains trade secrets, the application shall state: (1) the specific nature of the advantage, (2) how the advantage would be lost, (3) the value of the information to the applicant, and (4) the ease or difficulty with which the information could be legitimately acquired or duplicated by others.

Here, the applicant is an association of tire manufacturing companies that are in direct competition with one another. The applicant states that its members share data with the applicant to improve tire performance and safety to enhance robust and open analysis, but they do so only on assurance that the applicant will keep the data confidential. The applicant asserts that the tire data is not generally known, and it is not shared with the applicant's own member companies or the public. The applicant states it has shared the information with regulatory agencies only when the agency agrees to maintain confidentiality. The applicant is under no obligation to provide the tire data to the CEC and has stated its intent to do so only if this application for confidential designation is granted. The applicant contends that competitors would gain an unfair economic advantage by gaining access to the manufacturing and performance data about competitors' products.

The applicant has made a reasonable claim that the tire data is exempt as trade secrets. The applicant addresses the four elements identified in California Code of Regulations, title 20, section 2505(a)(1)(D), in summary form, stating that its members may be harmed by the loss of confidentiality because competitors can use this data to derive economic value by gaining access to the manufacturing and performance data about competitors' products.

Executive Director's Determination

For these reasons, the applicant's application for confidential designation is approved. Confidentiality is granted for the entirety of the Excel file of tire data indefinitely.

Be advised that persons may petition to inspect or copy records that have been designated as confidential, the executive director may disclose, or release records previously designated as confidential in certain circumstances, and the CEC may hold a hearing to determine the confidentiality of its records on its own motion or on a motion by CEC staff. The procedures and criteria for disclosing or releasing, filing, reviewing, and acting upon such petitions or motions are set forth in the California Code of Regulations, title 20, sections 2506 through 2508.

Any related subsequent submittals can be deemed confidential, without the need for an application, by following the procedures set forth in California Code of Regulations, title 20, section 2505(a)(4).

If you have questions, please email confidentialityapplication@energy.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Drew Bohan', with a long horizontal stroke extending to the right.

Drew Bohan
Executive Director